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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JASON STOLIKER,
JAMES D. WESTBROOK,
KEVIN COLLINS, and
RAYMOND EDWARD ROBERTS

Appeal No. 2008-1635
Application No. 09/683,772
Technology Center 3600

Decided: June 27, 2008

Before HUBERT C. LORIN, ANTON W. FETTING, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from a decision of the Examiner rejecting claims 1-24, all the claims on appeal. 35 U.S.C. § 134 (2002). We have jurisdiction under 35 U.S.C. § 6(b) (2002).

THE INVENTION

The invention relates to an online method and system for issuing vehicle repossession assignments to vehicle repossession contractors.

Claims 1 and 9 are illustrative of the claimed invention:

1. An online system for issuing vehicle repossession assignments to vehicle repossession contractors, the system comprising at least one server computer operably serving at least one client computer, the at least one server computer configured to:
 - (i) host a secure online account for a vehicle repossession contractor wherein the online account is securely and remotely accessible by the contractor;
 - (ii) receive input assigning at least one vehicle repossession assignment to the contractor wherein the at least one vehicle repossession assignment is added to the contractor's online account;
 - (iii) automatically present the at least one vehicle repossession assignment to the contractor upon the contractor's login to the account; and
 - (iv) receive input containing feedback from the contractor regarding a vehicle repossession assignment that has been completed.
9. An online method for delivering vehicle repossession assignments, the method comprising:
 - establishing a secure online account for a vehicle repossession contractor wherein the online account is securely and remotely accessible by the contractor;
 - delivering at least one vehicle repossession assignment to the contractor wherein the at least one vehicle repossession assignment is added to the contractor's online account;

automatically presenting the at least one vehicle repossession assignment to the contractor upon the contractor's login to the account; and receiving input from the contractor containing feedback regarding a completed vehicle repossession assignment.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Garg US 2005/0149374 A1 Jul. 7, 2005
Federal Trade Commission,
Facts for Consumers: Vehicle Repossession (1998),
<http://www.ftc.gov/bcp/online/pubs/autos/carrepo.htm> (last visited
Jun. 6, 2006).

The claims are rejected as follows:

- Claims 1-5, 7-13, 15-21, and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Garg; and,
- Claims 6, 14, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Garg in view of “Facts for Consumers.”

We AFFIRM.¹

A. Issue

The issue is whether the Appellants have shown that the Examiner erred in holding that Garg would have rendered the subject matter of claims 1-5, 7-13, 15-21, and 24 obvious to one of ordinary skill in the art at the time

¹ Our decision will make reference to the Appellants' Appeal Brief (“Br.,” filed Mar. 6, 2007) and the Examiner's Answer (“Answer,” mailed Jun. 25, 2007).

of the invention.² There is also an issue as to whether the Appellants have shown that the Examiner erred in holding that the combination of Garg and “Facts for Consumers” would have rendered the subject matter of claims 6, 14, and 22 obvious to one of ordinary skill in the art at the time of the invention. The issue turns on whether Garg would lead one to the claimed “the at least one server computer configured to: ...; (iii) automatically present the at least one vehicle repossession assignment to the contractor upon the contractor’s login to the account; ... ” (claim 1).

B. Findings of Fact

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

The scope and content of the prior art

1. Garg relates to a software-based method and apparatus for tracking and dispatching tow assignments.
2. Garg [0080] describes a system by which a dispatcher can send a tow assignment to a tow truck mobile data terminal.

[0080] Another method is available to assign an unassigned tow to a truck when the truck is equipped with a mobile data terminal. This method contemplates that the dispatcher utilizing a mouse or other similar pointing device selects the tow to

² Only those arguments actually made by the Appellants have been considered in this decision. Arguments that the Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

be assigned from the bottom section 1604, then selects a driver from the third section 1606, and then selects the dispatch pushbutton 1620. Upon selection of the dispatch pushbutton 1620, the tow is assigned to the driver selected in the third section 1606, whereupon the system then automatically moves the unassigned tow request from the bottom section 1604 to the top section 1602, automatically changes the status of the tow request to dispatched and the change of status is logged into the database, and the tow request is then sent to the tow truck's mobile data terminal.

3. This is accomplished via a "Tow Management System" comprising a server. See Garg e.g., [0047] See also [0048] and [0077] ("Tow Management System").

[0047] Referring to FIG. 1, there is shown a block diagram showing the typical hardware utilized in the preferred embodiment of the present invention. The server 102 is shown with storage 104 for the tow management system database. Typically, the server 102 would be provided by an ASP. However, it is contemplated that some tow companies may prefer to have their own server. A tower computer terminal 106 and a customer computer terminal 108 are connected to each other and the server 102 via a computer connection 110.

4. The server is accessible with a username and password. See Garg [0049].

[0049] Access to the server 102 is granted to an account with a username and password. Anyone desiring access to the server 102 must first login. This enables one server 102 to serve a plurality of towers. Similarly, customer access to a tower

computer terminal 106 with a username and password. Even though the customer computer terminal 108 and the server 102 utilize the same computer connection 110, the customer does not have direct access to the data on the server 102. If data the customer desires is stored on the server 102, the customer must first log into the tower computer terminal 106, the tower computer terminal would log into the server 102, the data would be sent from the server 102 to the tower computer terminal 106 which would then send the data to the customer at the customer computer terminal 108. Thus a plurality of servers 102, tower computer terminals 106 and customer computer terminals 108 may be connected to the same computer link 110. Furthermore, since the records stored on server 102 are associated to a tower, the ASP may charge a transaction fee for each tow transaction.

5. “Facts for Consumers” relates to vehicle repossession.

Any differences between the claimed subject matter and the prior art

6. The claimed method and system differ from that of Garg in employing the Garg techniques for tow assignments to vehicle repossession assignments.

The level of skill in the art

7. Neither the Examiner nor the Appellants has addressed the level of ordinary skill in the pertinent art of online delivery of assignments. As such, we will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not

give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown.’”) (Quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Secondary considerations

8. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

C. Principles of Law

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 17-18.

D. Analysis

The rejection of claims 1-5, 7-13, 15-21, and 24 under 35 U.S.C. § 103(a) over Garg.

The Appellants argued claims 1-5, 7-13, 15-21, and 24 as a group (Br. 4-6). We select claim 1 as the representative claim for this group and the remaining claims 2-5, 7-13, 15-21, and 24 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Examiner argued that Garg describes all the claimed limitations except that “Garg does not expressly disclose that the vehicle assignment is for repossession.” (Answer 4.) The Examiner concluded as follows:

Garg discloses a system where a customer communicates a vehicle assignment request to a dispatcher who assigns the vehicle assignment to a driver of a tow truck. Examiner points out that the fact the vehicle assignment is for repossession is an intended field of use and has no functional significance on the structure or limitations of the claims (i.e. whether the truck is taken by a bank or police based on failure to pay does not change the assignment of the vehicle to a contractor). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to assign a vehicle assignment concerning repossession to a contractor using the system of Garg in order to more efficiently allow a vehicle assignment to be requested by a secondary party, such as police or banks, by using an automated system that reduces errors, cost, and labor requirements. See paragraphs 0012, 0014, 0016.

(Answer 4.)

The Appellants argued only that “Garg fails to teach, disclose, or suggest automatically presenting the at least one vehicle repossession

assignment to the contractor upon the contractor's login to the account.”
(Br. 4.)

To show Garg describes this claim limitation, the Examiner relied on “paragraphs 0043, 0045, 0047-9, 0069, 0080, 0098, wherein the tower logs-in to the system and is able to receive the assignment that was assigned to the tower by the dispatcher via the dispatch system. The mobile terminal presents the dispatched assignment and thus is presented automatically” (Answer 3-4.)

The Appellants disagree with the Examiner, arguing that (1) “Garg is silent as to whether a tow truck operator with a mobile data terminal logs in to an account in the sense claimed” (Br 4); (2) “assuming, *arguendo*, that a tow truck operator of Garg logs into an account in the sense claimed, Garg is silent as to whether a tow truck driver is automatically presented with a tow assignment upon such login” (Br. 5); (3) “to the extent Examiner argues Garg inherently discloses that a tow truck operator with a mobile data terminal logs into an account in the sense claimed and/or a tow truck driver is automatically presented with a tow assignment upon such login, [the] Examiner fails to carry the burden [of showing that this necessarily would occur]” (Br. 5); and, (4) “because customers of Garg submit tow requests from customer terminal 108 to the Tow Management System via tower computer terminal 106, if a tower of Garg is not logged in to the system, a customer associated with that tower cannot submit a request to the system” (Br. 6). The Appellants conclude that, as to the Garg system, “there are no tow requests to automatically assign when a tower logs in” (Br. 6).

The Examiner responded as follows:

In response to this argument, Examiner respectfully disagrees. In paragraph 43, Garg clearly states that the towers set up accounts with an ASAP and that each tower has a software client, such as a web browser, that allows them to connect with the system. The tower logs into the system since the system controls access rights. To logon, the user, such as one of the plurality of towers connected to the system, must use a username and password. Once the tower's computer terminal is logged into the server, data is sent from the server to the tower's computer terminal (paragraph 49). The computer connection occurs via the Internet (paragraph 45), and the system has a server, a tower computer terminal, and a customer terminal connected via the system (paragraph 47). Therefore, Garg et al. specifically discloses that the tower logs into the system using a username and password, since the system controls access rights.

In paragraphs 69 and 80, Garg discloses that the tower has the computer terminal of a mobile data terminal. The system dispatches assignments to the tower via this terminal. Specifically, an unassigned job is assigned to a tower that has a mobile data terminal. The job is automatically moved from being unassigned to assigned and is automatically dispatche[d] as a request to the tower's data terminal. In a separate step, the tower accepts the assignment and the system specifically records the time, date, and odometer reading of the tower at the time of acceptance. Therefore, Garg et al. discloses that in order to access the system

via a computer terminal, the tower must log on using a user name and password and Garg also discloses that the tower is automatically presented with information from the server, such as assignments, via a (computer) mobile data terminal.

(Answer 9.)

We have carefully reviewed the record and find that the Examiner has the better argument.

The claim limitation at issue is: “the at least one server computer configured to: ...; (iii) automatically present the at least one vehicle repossession assignment to the contractor upon the contractor’s login to the account;”

As the Examiner has explained, Garg [0080] describes a system by which a dispatcher can send a tow assignment to a tow truck mobile data terminal. This is accomplished via a “Tow Management System” comprising a server. See Garg [0047], [0048], and [0077]. The server is accessible with a username and password. See Garg [0049].

Accordingly, Garg describes a server computer configured to both present an assignment and to permit logging into the system.

The question is whether one of ordinary skill in the art with Garg in hand would be led to a server computer configured to *automatically* present the assignment *upon* logging into the system. In our view, one of ordinary skill in the art would understand that the Garg system encompasses a system whereby the server allows the tow truck operator to have access to a dispatched assignment upon logging into the system. Where an assignment is present in the system, the assignment would be “automatically” present. In that circumstance, the server of the system would have “automatically”

presented the assignment to the operator, upon logging into the system. Thus, one of ordinary skill in the art with Garg in hand would be led to a server computer configured to *automatically* present the assignment *upon* logging into the system.

Furthermore, irrespective of how the server may be implemented, a server computer configured to automatically present an assignment to an operator upon an operator's login would have been obvious to one of ordinary skill in the art over Garg because it combines the operations of presenting an assignment and logging into the system, both of which Garg describes, into a single operation with the expected result, i.e., the presentation of an assignment at the time of logging in. "An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Leapfrog Ent., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR* at 1739 ("The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.")). "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR* at 1740.

As to the specific arguments, the Appellants' argument (1) is unpersuasive because we do not understand what the Appellants mean by "in the sense claimed." Garg discloses a server configured for logging in. One of ordinary skill in the art would understand that a successful login presumes the individual logging into the system is approved to access the system. This normally requires a record of that approval in the system. A customer

record is synonymous with an “account.” The Appellants’ argument (2) is unpersuasive because, again, we do not understand what the Appellants mean by “in the sense claimed.” As we have explained, *supra*, a server computer configured to automatically present an assignment to an operator upon the operator’s login would have been obvious to one of ordinary skill in the art given Garg’s description of a server configured to both present an assignment and to permit logging into the system. The Appellants’ argument (3) is unpersuasive because the Examiner has made an explicit analysis that is not mere conclusory statements. See the passages reproduced from the Answer, *supra*. The Examiner provided “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The Examiner’s “analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a[n examiner] can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR* at 1741. The Appellants’ argument (4) is unpersuasive because the issue is whether Garg would lead one to a server having the capability to function as claimed not whether customers can submit requests to the tower computer if the tower is not logged into the system.

We have considered the Appellants’ arguments but do not find them persuasive as to error in the rejection.

The rejection of claims 6, 14, and 22 under 35 U.S.C. § 103(a) over Garg in view of “Facts for Consumers.”

The Appellants simply state that “[c]laims 6, 14, and 22 are patentable because they depend from one of the independent claims.” (Br. 7.) This is not a persuasive argument as to error in the rejection. The rejection as to claims 6, 14, and 22 is sustained.

E. Conclusion of Law

On the record before us, the Appellants have failed to show that the Examiner erred in rejecting the claims over the cited prior art as a whole.

DECISION

The rejections of claims 1-5, 7-13, 15-21, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Garg; and, claims 6, 14, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Garg in view of “Facts for Consumers” are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

Appeal 2008-1635
Application 09/683,772

hh

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